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Meeting of States Parties
Fourteenth Meeting
New York, 14-18 June 2004

Reimbursement of national taxes

Note by the Tribunal

I. Introduction

1. In 2003, the thirteenth Meeting of States Parties, in paragraph (f) of its decision relating to the staff assessment fund of the Tribunal (SPLOS/98), requested the Tribunal to study and report on staff assessment systems adopted for other international organizations, in particular the staff assessment existing in the United Nations system. The Meeting of States Parties also requested the Tribunal to include proposals on possible solutions to ensure that States Parties' contributions would not be used to reimburse tax levied by other States. The Tribunal was further requested to seek to negotiate bilateral agreements concerning tax reimbursements by States which levy national taxes on remuneration paid by the Tribunal, and to report to the fourteenth Meeting of States Parties thereon.

II. Staff assessment systems in international organizations

A. United Nations Organization

2. Article V, section 18(b) of the Convention on the Privileges and Immunities of the United Nations[1] provides that "officials of the United Nations shall ... [be] exempt from taxation on the salaries and emoluments paid to them by the United Nations". The General Assembly has recognized that immunity from taxation of salaries paid by the United Nations is necessary "[i]n order to achieve full application of the principle of equity among members and equality among personnel of the United Nations".[2]

[1] 1 *UNTS* 15.

[2] General Assembly resolution 78 (I). See also *United Nations Juridical Yearbook* ("UNJY") *1972*, p. 190 at p. 191; and 1991 *UNJY*, p. 329.

3. In order to address the situation of United Nations officials who were obliged to pay national taxes on their income paid by the United Nations, the General Assembly, in its resolution 239 (III), decided to impose a direct assessment on United Nations officials which was comparable to national income taxes. This "staff assessment" would provide a source from which the national taxes paid by staff members could be reimbursed to them by the Secretary-General, thereby achieving equality of treatment as between staff members, regardless of their nationality, while avoiding the imposition of any additional financial burden on those Member States which did not subject their nationals to income taxes.[3]

4. Subsequent to the introduction of staff assessment, the General Assembly, in its resolutions 973 (X) and 1099 (XI), established the Tax Equalization Fund, to which all revenue derived from the staff assessment plan is credited. Under this arrangement, the total amount of assessment paid by United Nations officials in lieu of national taxes is credited to the account of each Member State, in the proportion to which the Member State contributes to the regular budget of the United Nations. Taxes paid by nationals and permanent residents of a Member State are refunded to them by the United Nations and the refunds are charged against the account of that Member State. The amount of income derived from staff assessment that is returned to each Member State is therefore reduced to the extent to which officials from that Member State have been reimbursed by the United Nations for the taxes that they have paid on their income.[4]

B. Specialized agencies of the United Nations

5. Article VI, section 19(b) of the Convention on the Privileges and Immunities of the Specialized Agencies,[5] provides that officials of the specialized agencies shall "[e]njoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations". Despite this provision, some States do not accord staff members of the specialized agencies exemption from taxation of salaries and emoluments.

6. Most specialized agencies of the United Nations also have staff assessment arrangements resembling those established by the United Nations. However, only a few specialized agencies (for example, the Food and Agriculture Organization of the United Nations and the World Health Organization) have tax equalization funds. Many of those agencies that do not have tax equalization funds have entered into bilateral tax reimbursement agreements to obtain reimbursement from the taxing State for the amount refunded to a staff member who has paid national income tax on salary and emoluments earned from the specialized agency. Tax reimbursement agreements, however, may not always provide for full reimbursement to the organization of the amount of income tax paid by a staff member on salary and emoluments.

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[3] See *Official Records of the General Assembly, Thirty-first Session, Supplement No. 30* (A/31/30), para. 203.

[4] 1975 *UNJY*, p. 191, at p. 192; 1972 *UNJY*, p. 188, at pp. 189-190. See also United Nations financial regulations 4.10, 4.11, 4.12. Only a small number of Member States tax their nationals on the salary and emoluments paid to them by the United Nations.

[5] 33 *UNTS* 261.

7. The principle of tax exemption has been recognized as an essential condition of employment in the international civil service.[6] Accordingly, an organization cannot rely on the terms of a tax reimbursement agreement to provide other than full exemption to its employees from national income tax.[7] Any discrepancy between the amount reimbursed by the taxing State to the organization and the tax paid by the staff member must therefore be borne by the organization.[8] Moreover, an organization cannot derogate from its obligations concerning tax exemption by creating limiting provisions in bilateral agreements and in its staff regulations.[9]

8. An organization is obliged, where its rules and regulations so provide, to reimburse its staff members for tax payments made on salary and emoluments paid by the organization, irrespective of the existence or otherwise of a tax reimbursement agreement or staff assessment or tax equalization fund.[10]

III. The position of the Tribunal

9. In order to address the issue of national taxes paid by some staff members on salary and emoluments paid to them by the Tribunal, the Tribunal has maintained a Staff Assessment Account since 1996. Two staff members and one member of the Tribunal who are not exempted by their State of nationality or permanent residency (the United States) from tax liability on their earnings from the Tribunal have been reimbursed the amount of their tax liability from the Staff Assessment Account to date.[11]

10. Following the decision of the Meeting of States Parties taken at its thirteenth meeting relating to the staff assessment fund of the Tribunal (SPLOS/98 of 12 June 2003), the question of reimbursement to staff members and one member of the Tribunal of national taxes paid by them on their salary and emoluments after 2004 arises.

11. To address this situation, the Registry has contacted the State Department of the United States Government and the Ambassador of the United States to Germany in order to conclude a bilateral tax agreement between the Tribunal and the United States Government. Pending the outcome of negotiations on the conclusion of a bilateral tax reimbursement agreement and in accordance with paragraph (e) of the above-mentioned decision (SPLOS/98), the Tribunal has included in its budget proposals for 2005-2006 a budget line to reimburse officials and members of the Tribunal for national taxes paid in respect of remuneration paid by the Tribunal.

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[6] See recent judgements of the Administrative Tribunal of the International Labour Organization (ILOAT), Nos. 2032, 2256, 2296.

[7] Ibid.

[8] ILOAT judgement No. 2256.

[9] ILOAT judgement No. 2256, at para. 12.

[10] ILOAT judgement No. 2032. For example, no tax reimbursement arrangements existed between the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United States during the period when the United State was not a member of UNESCO. During this period, UNESCO reimbursed national income tax payments made by staff members who were nationals of the United States out of common staff costs.

[11] Article 11(1) of the Agreement on the Privileges and Immunities of the Tribunal provides that "[t]he salaries, emoluments and allowances paid to Members and officials of the Tribunal shall be exempt from taxation".